



*Automobile Insurance Co.*, the Seventh Circuit held that Rule 407 prohibited the Plaintiff from introducing changes made to State Farm's insurance policy subsequent to the events at issue in the case in order to support her argument that the meaning of the word "day" in the operative contract was ambiguous. 487 F.3d 1042, 1044 (7th Cir. 2007). As Judge Posner explained, "to use at trial a revision in a contract to argue the meaning of the original version would violate Rule 407 . . . by discouraging efforts to clarify contractual obligations, thus perpetuating any confusion caused by unclarified language in the contract." *Id.* The Court went on to hold that that "Rule 407 is not limited to 'repair' in the literal sense." *Id.*

The First, Third, and Tenth Circuit Courts of Appeals agree with Judge Posner's reasoning. For example, in *Hickman v. Gem Insurance Co.*, the Tenth Circuit held that a medical benefits insurer's change in reimbursement policy was *not admissible* to establish liability for abusing its discretion under the federal pension statute in applying prior plan's language. 299 F.3d 1208, 1214 (10th Cir. 2002). *See Reynolds v. Univ. of Pennsylvania*, 483 F. App'x 726, 733 (3d Cir. 2012) (holding that Rule 407 precluded Plaintiff from introducing evidence that the university revised its marketing materials for graduate program to show confusion); *also Ekco Grp., Inc. v. Travelers Indem. Co. of Illinois*, 273 F.3d 409, 415 (1st Cir. 2001) (holding that changes that insurer organization made to standard form language in "advertising injury" coverage provision in general commercial liability policy made after insured's advertising injury claim arose were not admissible against insurer to construe meaning of language of provision before claim arose).

Humble apparently intends to use contracts that do not govern *any* claims in this case to show that the operative, relevant contracts were not “clear.” (Trial Tr., Day 7, p. 11:13–17). But expression can always be made clearer and to change language in a policy is simply a precaution against recurrent misunderstanding.” *Ekco Grp., Inc.*, 273 F.3d at 415.

Rule 407 specifically prohibits Humble from attempting to use 2015–2016 policy language against Cigna in this case.

Respectfully submitted,

**ANDREWS KURTH LLP**

By: s/ John B. Shely

**John B. Shely**

State Bar No. 18215300

Southern District No. 7544

**Dena Palermo**

State Bar No. 08928830

Southern District No. 6082

**Brian Pidcock**

State Bar No. 24074895

Southern District No. 1654553

600 Travis, Suite 4200

Houston, Texas 77002

(713) 220-4105 (JBS)

(713) 220-3846 (DP)

[jshely@andrewskurth.com](mailto:jshely@andrewskurth.com)

[dpalermo@andrewskurth.com](mailto:dpalermo@andrewskurth.com)

[brianpidcock@andrewskurth.com](mailto:brianpidcock@andrewskurth.com)

**ATTORNEYS FOR PLAINTIFFS  
CONNECTICUT GENERAL LIFE  
INSURANCE COMPANY and  
CIGNA HEALTH AND LIFE  
INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

On January 21, 2016, the foregoing document was electronically filed with the Clerk of the Court for the U.S. District Court, Southern District of Texas, using the CM/ECF system. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record.

s/ John B. Shely

John B. Shely

**CERTIFICATE OF CONFERENCE**

Based on representations made by Humble's counsel in open court during trial in this matter, Humble is opposed to the relief requested herein.

s/ Dena Palermo

Dena Palermo

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**CONNECTICUT GENERAL LIFE  
INSURANCE COMPANY and  
CIGNA HEALTH AND  
LIFE INSURANCE COMPANY,**

**Plaintiffs,**

**VS.**

**HUMBLE SURGICAL HOSPITAL,  
LLC**

**Defendant.**

1. **Introduction**  
 2. **Background**  
 3. **Methodology**  
 4. **Results**  
 5. **Discussion**  
 6. **Conclusion**  
 7. **References**  
 8. **Appendix**  
 9. **Index**  
 10. **Table of Contents**  
 11. **Abstract**  
 12. **Summary**  
 13. **Key Words**  
 14. **Keywords**  
 15. **Subject Headings**  
 16. **Classification**  
 17. **Indexing**  
 18. **References**  
 19. **Appendix**  
 20. **Index**  
 21. **Table of Contents**  
 22. **Abstract**  
 23. **Summary**  
 24. **Key Words**  
 25. **Keywords**  
 26. **Subject Headings**  
 27. **Classification**  
 28. **Indexing**  
 29. **References**  
 30. **Appendix**  
 31. **Index**  
 32. **Table of Contents**  
 33. **Abstract**  
 34. **Summary**  
 35. **Key Words**  
 36. **Keywords**  
 37. **Subject Headings**  
 38. **Classification**  
 39. **Indexing**  
 40. **References**  
 41. **Appendix**  
 42. **Index**  
 43. **Table of Contents**  
 44. **Abstract**  
 45. **Summary**  
 46. **Key Words**  
 47. **Keywords**  
 48. **Subject Headings**  
 49. **Classification**  
 50. **Indexing**  
 51. **References**  
 52. **Appendix**  
 53. **Index**  
 54. **Table of Contents**  
 55. **Abstract**  
 56. **Summary**  
 57. **Key Words**  
 58. **Keywords**  
 59. **Subject Headings**  
 60. **Classification**  
 61. **Indexing**  
 62. **References**  
 63. **Appendix**  
 64. **Index**  
 65. **Table of Contents**  
 66. **Abstract**  
 67. **Summary**  
 68. **Key Words**  
 69. **Keywords**  
 70. **Subject Headings**  
 71. **Classification**  
 72. **Indexing**  
 73. **References**  
 74. **Appendix**  
 75. **Index**  
 76. **Table of Contents**  
 77. **Abstract**  
 78. **Summary**  
 79. **Key Words**  
 80. **Keywords**  
 81. **Subject Headings**  
 82. **Classification**  
 83. **Indexing**  
 84. **References**  
 85. **Appendix**  
 86. **Index**  
 87. **Table of Contents**  
 88. **Abstract**  
 89. **Summary**  
 90. **Key Words**  
 91. **Keywords**  
 92. **Subject Headings**  
 93. **Classification**  
 94. **Indexing**  
 95. **References**  
 96. **Appendix**  
 97. **Index**  
 98. **Table of Contents**  
 99. **Abstract**  
 100. **Summary**  
 101. **Key Words**  
 102. **Keywords**  
 103. **Subject Headings**  
 104. **Classification**  
 105. **Indexing**  
 106. **References**  
 107. **Appendix**  
 108. **Index**  
 109. **Table of Contents**  
 110. **Abstract**  
 111. **Summary**  
 112. **Key Words**  
 113. **Keywords**  
 114. **Subject Headings**  
 115. **Classification**  
 116. **Indexing**  
 117. **References**  
 118. **Appendix**  
 119. **Index**  
 120. **Table of Contents**  
 121. **Abstract**  
 122. **Summary**  
 123. **Key Words**  
 124. **Keywords**  
 125. **Subject Headings**  
 126. **Classification**  
 127. **Indexing**  
 128. **References**  
 129. **Appendix**  
 130. **Index**  
 131. **Table of Contents**  
 132. **Abstract**  
 133. **Summary**  
 134. **Key Words**  
 135. **Keywords**  
 136. **Subject Headings**  
 137. **Classification**  
 138. **Indexing**  
 139. **References**  
 140. **Appendix**  
 141. **Index**  
 142. **Table of Contents**  
 143. **Abstract**  
 144. **Summary**  
 145. **Key Words**  
 146. **Keywords**  
 147. **Subject Headings**  
 148. **Classification**  
 149. **Indexing**  
 150. **References**  
 151. **Appendix**  
 152. **Index**  
 153. **Table of Contents**  
 154. **Abstract**  
 155. **Summary**  
 156. **Key Words**  
 157. **Keywords**  
 158. **Subject Headings**  
 159. **Classification**  
 160. **Indexing**  
 161. **References**  
 162. **Appendix**  
 163. **Index**  
 164. **Table of Contents**  
 165. **Abstract**  
 166. **Summary**  
 167. **Key Words**  
 168. **Keywords**  
 169. **Subject Headings**  
 170. **Classification**  
 171. **Indexing**  
 172. **References**  
 173. **Appendix**  
 174. **Index**  
 175. **Table of Contents**  
 176. **Abstract**  
 177. **Summary**  
 178. **Key Words**  
 179. **Keywords**  
 180. **Subject Headings**  
 181. **Classification**  
 182. **Indexing**  
 183. **References**  
 184. **Appendix**  
 185. **Index**  
 186. **Table of Contents**  
 187. **Abstract**  
 188. **Summary**  
 189. **Key Words**  
 190. **Keywords**  
 191. **Subject Headings**  
 192. **Classification**  
 193. **Indexing**  
 194. **References**  
 195. **Appendix**  
 196. **Index**  
 197. **Table of Contents**  
 198. **Abstract**  
 199. **Summary**  
 200. **Key Words**  
 201. **Keywords**  
 202. **Subject Headings**  
 203. **Classification**  
 204. **Indexing**  
 205. **References**  
 206. **Appendix**  
 207. **Index**  
 208. **Table of Contents**  
 209. **Abstract**  
 210. **Summary**  
 211. **Key Words**  
 212. **Keywords**  
 213. **Subject Headings**  
 214. **Classification**  
 215. **Indexing**  
 216. **References**  
 217. **Appendix**  
 218. **Index**  
 219. **Table of Contents**  
 220. **Abstract**  
 221. **Summary**  
 222. **Key Words**  
 223. **Keywords**  
 224. **Subject Headings**  
 225. **Classification**  
 226. **Indexing**  
 227. **References**  
 228. **Appendix**  
 229. **Index**  
 230. **Table of Contents**  
 231. **Abstract**  
 232. **Summary**  
 233. **Key Words**  
 234. **Keywords**  
 235. **Subject Headings**  
 236. **Classification**  
 237. **Indexing**  
 238. **References**  
 239. **Appendix**  
 240. **Index**  
 241. **Table of Contents**  
 242. **Abstract**  
 243. **Summary**  
 244. **Key Words**  
 245. **Keywords**  
 246. **Subject Headings**  
 247. **Classification**  
 248. **Indexing**  
 249. **References**  
 250. **Appendix**  
 251. **Index**  
 252. **Table of Contents**  
 253. **Abstract</**

# JURY DEMANDED

CIVIL ACTION NO.: 4:13-cv-3291

## ORDER

Cigna's Motion to Exclude Evidence of Subsequent Remedial Measures is GRANTED.

It is so Ordered.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Kenneth M. Hoyt  
United States District Judge